TATA IRON & STEEL COMPANY LTD. A

v.

DISTRICT TRANSPORT OFFICER & ORS.

(Civil Appeal No.3162 of 2006)

SEPTEMBER 08, 2015 B

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

Bihar and Orissa Motor Vehicles Taxation Act, 1930: s.6(1A) – Public Service Motor Vehicle – Imposition of additional tax – Motor vehicles used by appellant for which respondent demanded additional motor vehicles tax – Vehicles are bus, truck, tipper, water tanker, diesel tanker, explosive van, trailer, canteen van and school bus – School bus is used for carrying the children wards of the employees of the appellant from and to educational institutions purely as welfare measure – Tipping trucks are used for handling of coal within the mining area for production purposes – Explosive vans are used for transfer of explosives – Likewise other vehicles are also used captively for business purpose – Thus these vehicles are used by appellant for its own purpose and would not be treated as vehicle for public or third party – Therefore, in such situation, appellant is not liable to pay additional tax in terms of s.6(1A) of the Act. C D E

Allowing the appeal, the Court F

HELD: 1. The High Court has held that the expression 'adapted' in Section 2(j) has to be given its full meaning and when the vehicle was capable of being used for carrying of passengers and goods, it would be treated as "Public Service Motor Vehicle." This approach is clearly faulty. There was no dispute about the first requirement. The appellant had rested its case on the G

 H

A **submission that the second requirement namely 'hire' or 'reward' had not been fulfilled. The expression 'hire' or 'reward' would mean that the vehicle must be run for the benefit of another. Obviously, the appellant is the owner, if the vehicle is given on 'hire' to a third person**
B **and charges are received therefrom, it would amount to using the vehicle for 'hire'. Likewise, when the owner of the vehicle uses the vehicle himself but for the benefit of another person i.e. third person and receives some charges for the said use, that may fulfill the requirement**
C **of 'reward'. Insofar as the present case is concerned, the vehicles are not used for the third party at all. Most of the vehicles are used for business purposes. Some vehicles are used for carrying the children of the**
D **employees from their residence to schools and back. That would not be treated as using the vehicle for public or third party. [Paras 5, 7, 8 and 9] [330-F-G; 331-C-D, E]**

E *M/s. Tata Engineering Locomotive Co. Ltd. v. The Sales Tax Officer Poona and Anr.* **1979 (2) SCR 357: (1979) 1 SCC 208;** *Hindustan Aeronautics Ltd. v. Registering Authority and Ors.* **1999 (2) Suppl. SCR 296: (1999) 8 SCC 169 – relied on.**

F *M/s. Central Coalfields Ltd. v. State of Orissa* **AIR 1992 SC 1371 : 1992 (2) SCR 982;** *State of Mysore v. Syed Ibrahim* **(1967) 2 SCR 361 – distinguished.**

Case Law Reference

G

1979 (2) SCR 357	**relied on.**	**Para 9**
1999 (2) Suppl. SCR 296	**relied on.**	**Para 9**
(1967) 2 SCR 361	**distinguished.**	**Para 10**
1992 (2) SCR 982	**distinguished.**	**Para 10**

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3162 of 2006. A

From the Judgment and Order dated 20.08.2004 of the High Court of Jharkhand at Ranchi in CWJC No. 3338 of 1992.

D.A. Dave, Gopal Jain, R.N. Karanjawala, Nandini Gore, Kartik Bhatnagar, Tahira Karanjawal, Neha Khandelwal, Manik Karanjawala for the Appellant. B

Ajit Kumar Sinha, Gopal Prasad, Jayesh Gaurav for the Respondent. C

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. In the instant appeal we are concerned with the issue as to whether the appellant is liable to pay additional motor vehicles tax in terms of sub-section(1A) of Section 6 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as 'the Act'). Section 6 of the Act relates to imposition of tax on the motor vehicles. Under sub-section(1) motor vehicles tax is leviable on every motor vehicle. The rates of such tax are specified in the Second Schedule of the Act. However, under sub-section (1-A), certain kinds of motor vehicles are also liable to pay additional motor vehicles tax at the rate specified in the Third Schedule of the Act. Such vehicles have to fulfill the description of "Public Service Motor Vehicle". Section 2 contains certain definitions for the aforesaid purposes. Relevant provisions are Section 2(a) and (j), which read as under: D E F

> "2(a). "invalid carriage", "motor cab", "motor cycle", "motor vehicle", "public place", "public service vehicle", "trailer", "transport vehicle", "unladen weight",["certificate of registration", "registering authority", "registered laded weight", and "tractor"] shall have the meanings respectively assigned to them in the Motor Vehicles Act, 1939 (IV of 1939); G H

A xxxx

xxxx

B 2(j) "Public Service Motor Vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers and goods for hire or reward and includes a motor cab, a stage carriage, or a public carrier;"

C 2. As per Section 2(a) above mentioned, kinds of vehicles and carriages etc., which include public service vehicles, are assigned the same meaning as is given in the Motor Vehicles Act, 1939. In any case, insofar as "Public Service Motor Vehicle" is concerned, it is specifically defined under Section 2(j) of the Act. Reading of the aforesaid definition would show that a motor vehicle falling under the definition of "Public Service D Motor Vehicle" has to satisfy the following conditions:

1) It is used or adapted to be used for the carriage of passengers and goods;

E 2. Such use has to be for 'hire' or 'reward'.

3. If the aforesaid conditions are satisfied, then the motor vehicle of 'any' description as mentioned in Section 2(a) would become "Public Service Motor Vehicle". The question is as to F whether the motor vehicles used by the appellant herein, for which the respondent is demanding additional motor vehicle tax, fulfill the aforesaid conditions. The vehicles with which we are concerned are altogether 57 vehicles which include bus, truck, tipper, water tanker,diesel tanker, explosive van, trailer, G canteen van and school bus etc. School bus is used for carrying the children wards of the employees of the appellant from and to educational institutions purely as welfare measure. Tipping trucks/trucks are used for handling of coal within the mining area for production purposes. As far as explosive vans H are concerned, these are used for transfer of explosives from

the appellant "Magazine to mines". Water tanker is used for sprinkling of water for dust suppression for mining operations and diesel tanker is used for filling up diesel to machinery within the mining area. As far as canteen vans are concerned, they are used for welfare measures only. What follows from the aforesaid use of various vehicles is that these are used by the appellant for its own purposes viz. these are capitively used. The appellant does not deny that these motor vehicles in question are adapted to be used for carriage of passengers and goods. However, it is contended that since the vehicles are used capitively by the appellant for its own purposes, these are not used for 'hire' or 'reward' and, therefore, the second requirement, as mentioned in the definition of "Public Service Motor Vehicle," has not been fulfilled and, therefore, no such additional motor vehicles tax is required to be paid.

4. This very contention was taken before the Adjudicating Authority as well. However, the said Authority, namely the District Transport Officer, Hazaribagh, rejected the argument on the ground that the vehicles are used for 'reward'. For this purpose, the Adjudicating Authority referred to the Oxford dictionary meaning for the word 'reward' which means "recompense for service or merit, given or obtained in return for work of service". In the opinion of the Adjudicating Authority, it would mean that 'reward' is something which is not necessarily only given by somebody but it would also recompense the situation where one gives to itself something in return for the work or service. On that basis, the Adjudicating Authority stated that the requirement of 'hire' or 'reward' was also fulfilled and, therefore, additional motor vehicles tax was liable to be paid. This order was challenged by filing writ petition in the High Court of Jharkhand at Ranchi. To the aforesaid reasons given by the Adjudicating Authority, which was the foundation of the order of the Adjudicating Authority, the plea of the appellant was that the expression 'hire' or 'reward' clearly

A postulated that the vehicle must be run for the benefit of another, either for higher charge, or for some reward received from the user and this was not a case where the vehicle was being used in such a manner. It was, thus, argued that no reward was received for use of the vehicles for its own use or for B carrying its employees to work or the children of the employees to educational institutions and back and, therefore, the ingredients of the definition of "Public Service Motor Vehicle " were not satisfied. The said writ petition of the appellant has also been dismissed by the impugned judgment dated 20th C August, 2004, out of which the present appeal arises.

5. After perusing the impugned judgment it would be seen that the aforesaid contention of the appellant challenging the order of the Adjudicating Authority has not been dealt with or D answered at all though it is specifically taken note of in para 4 of the said judgment. On the other hand, the entire basis of the impugned judgment rests on the discussion on the explanation for "adapted" which occurs in the definition and which is the first requirement of the definition as mentioned above. E Referring to some judgments of Kerala High Court as well as of this Court in **M/s. Central Coalfields Ltd. vs. State of Orissa [AIR 1992 SC 1371 = *(1992) Supp.3 SCC 133*]**, the High Court has held that the expression 'adapted' has to be F given its full meaning and when the vehicle was capable of being used for carrying of passengers and goods, it would be treated as "Public Service Motor Vehicle." This approach is clearly faulty. There was no dispute about the first requirement. As mentioned above, the appellant had rested its case on the G submission that the second requirement namely 'hire' or 'reward' had not been fulfilled. That argument has not been answered and instead the High Court went astray in basing its judgment on altogether different aspects which were not even in dispute.

H 6. In the aforesaid backdrop, when the High Court has

failed to answer the contention of the appellant on the basis of which the order of the Adjudicating Authority was challenged, we have to decide as to whether the Adjudicating Authority was correct in holding that the use of vehicles in the manner mentioned above amounts to using for 'reward'. We do not think it to be so.

7. Mr. D.A. Dave, learned senior counsel appearing for the appellant, was right in his submission that the expression 'hire' or 'reward' would mean that the vehicle must be run for the benefit of another. Obviously, the appellant is the owner, if the vehicle is given on 'hire' to a third person and charges are received therefrom, it would amount to using the vehicle for 'hire'.

8. Likewise, when the owner of the vehicle uses the vehicle himself but for the benefit of another person i.e. third person and receives some charges for the said use, that may fulfill the requirement of 'reward'. Insofar as the present case is concerned, the vehicles are not used for the third party at all.

9. Most of the vehicles are used for business purposes. Some vehicles are used for carrying the children of the employees from their residence to schools and back. That would not be treated as using the vehicle for public or third party as held by this Court in ***M/s. Tata Engineering Locomotive Co. Ltd. V. The Sales Tax Officer Poona and Anr. [(1979) 1 SCC 208]***. We may also usefully refer the judgment of this court in ***Hindustan Aeronautics Ltd. Vs. Registering Authority and Ors.[(1999)8 SCC 169],*** where the expressions 'hire' or 'reward' are explained in the following manner:

> "9. Although the circular is captioned Revision of charges to be levied for private use of Company's Vehicles, it is made clear that the policy of the company is to discourage private use of company's transport or vehicles but wherever it is considered necessary to permit

such use in unavoidable cases, the officer concerned will intimate the employees of the revised rates before forwarding the requests to the General Manager for approval. Thus the rates specified are not by way of an offer to the general public but to regulate the use of the vehicles in a particular manner. Thus the buses are not plied for hire or reward. And, in addition to that, the vehicles are used mainly for their employees and their children as part of the welfare measure of the employees. If the members of the family of the employees, like the spouses or children, are allowed to travel in those buses, it should not be treated as the vehicle being plied for hire or reward. In such circumstances, we do not think that the authorities were justified in treating the vehicles as being plied for hire or reward. They have lost sight of the fact that the requirement to attract the charge under Entry 4 of the Schedule to the Act was plying of motor vehicles for hire and not mere user. Therefore, we do not think that either the High Court or authorities under the Act were justified in either imposing the higher rate of tax under Entry 4 of the Schedule to the Act or upholding the same when challenged."

10. Mr. Sinha, learned senior counsel who appeared for the respondent, submitted that the case is covered by two judgments of this Court, which are: (1) ***State of Mysore vs. Syed Ibrahim [(1967) 2 SCR 361*** and (2) ***M/s. Central Coal Fields Ltd. Vs. State of Orissa [(1992) Supp.3 SCC 133.*** In ***State of Mysore(supra)*** where the question arose as to whether vehicle in question used would be covered by the definition of "Public Service Motor Vehicle" and public service vehicle contained in Section 42(1) read with Section 2(18) of the Act. The question was answered in the affirmative. However, the issue which was to be determined was as to whether carrying of passengers would make the vehicle as

"Public Service Motor Vehicle". There was no dispute that the said vehicle was used for 'hire' or 'reward' and, therefore, this aspect, with which we are directly concerned in the present case, was not in issue at all. The judgment therefore, shall be no help to the respondent. Same is the position in ***M/s. Central Coal Fields Ltd.(supra)*** as well wherein again the question that fell for consideration was as to whether a particular vehicle was adapted for use upon roads to attract tax liability. Here again the issue pertaining to the meaning that is to be assigned to 'hire' or 'reward' had not arisen for consideration.

11. In view of our aforesaid discussion, we are of the opinion that the judgment of the High Court is unsustainable. The same is, accordingly, set aside and the present appeal is allowed.

12. No order as to costs.

Devika Gujral

Appeal allowed.